REMARKS

Claim Rejections – 35 USC § 102

The examiner rejected independent claim 16 under 35 USC § 102(e) as being anticipated by Kenner. Amended claim 16 calls for at any time after a handle is provided, call a method other than a one method, the other method to obtain tracking information relative to a first marker without terminating the tracking from the first marker, the tracking information current as of the time the other method is called. Kenner does not anticipate amended claim 16.

For example, pursuant to the examiner's rejection, Kenner discloses a first marker because packets contain fields, which are markers. Office action, pages 2-3. In particular, a field identifying a packet as a test packet is the first marker. *Id.* Additionally, according to the rejection, a handle is taught by Kenner through the use of a testing program that is analogous to the ping program. *Id.*, at page 3. For example, a handle is a location of memory that stores the result of a ping command. *Id.* As explained by the examiner, the ping program can be invoked multiple times to obtain tracking information. *Id.*, pages 3-4. However, as claimed, the method used to obtain tracking information is a method other than the method that provides the handle to the first marker. Because ping provides both the handle and the tracking details per the rejection, claim 16 is patentably distinguished over Kenner.

Additionally, the ping program does not provide tracking information relative to a first marker without terminating the tracking. For example, to produce a summary of information the ping program is first ended. *See* "Computer Networks and Internets" second ed., page 12. Moreover, the alleged tracking of an individual packet is finished upon receipt of a response from the pinged computer, if a response is received. *Id.*, at 11. That is, pursuant to the examiner's analysis, the alleged first marker identifies a particular packet; therefore, if a response is returned for a given packet, that data is the only data available and the alleged tracking of that packet is finished. Data cannot be received at any time with respect the the first marker by calling a method other than ping. For at least these additional reasons, Kenner does not anticipate independent claim 16 or claims dependent thereon. Reconsideration of the rejection is requested.

Under a similar analysis, claim 36 and claims dependent thereon are also patentably distinguished over Kenner.

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The examiner rejected claim 26 as being anticipated by Kenner. Claim 26 recites receiving a handle to a first marker that is set in a transmission, the transmission to be distributed to a plurality of receivers, and tracking the transmission after the first marker, the tracking on-going from the time the handle to the first marker is received. It is respectfully submitted that the examiner has not established *prima facie* anticipation of at least claim 26 and/or claims 20-23.

To anticipate, a single prior art reference must disclose each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GMBH v. American Hoist &Derrick Co.,* 730 F.2d 1452, 1458-1459, (Fed. Cir. 1984). A modification of a reference's teachings, including the modification of a single prior art reference, precludes the reference from being anticipatory. *See, e.g., In re Kotzab,* 217 F.3d 1365, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000).

In the rejection of claim 26, the examiner is apparently relying on the analogous ping program of Kenner as teaching a first marker and a handle. However, Kenner only pings or tests remote SRUs 92 for response times. Column 27, lines 53-61. Moreover, only a specified computer is pinged in a given ping command. *See* "Computer Networks and Internets" second ed., pages 11-13. Therefore, pursuant to this analysis, only the SRU that is tested with a given ping command will respond to the particular test packet. There is no reason to believe that an end user's receiver is pinged per Kenner.

That Kenner's system comprises a user terminal 14 has no bearing on the above. In other words, the examiner acknowledges that test packets and video packet are different. Office action, pages 2-3. ("The system must know the difference between a test packet and a regular video data packet.") There is no evidence that users' end terminals are pinged in Kenner and there is no evidence that Kenner's test packet and a video data packet are the same. Thus, for at least these reasons, the examiner has not established *prima facie* anticipation. Reconsideration is requested.

Claim 44 was rejected under 35 U.S.C. § 102(e) as being anticipated by Kenner. Kenner clearly does not anticipate claim 44, which depends from claim 12, because Kenner does not disclose an encoder that combines different transmissions. Thus, claim 44 has been canceled and the subject matter is incorporated into independent claim 12. For at least this reason, claim 12

and claims dependent thereon are not anticipated by Kenner, nor obvious over Mao in view of Kapoor.
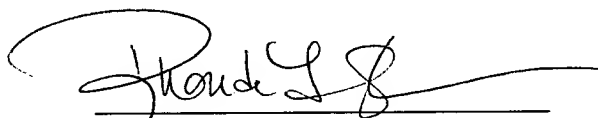
Conclusion

In view of the amendments and remarks herein, the application is believed to be in condition for allowance. The examiner's action in accordance therewith is respectfully requested.

The commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0083US).

Respectfully submitted,

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